

Jury Trial, Vol. IV of V

489

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

File No. 12-20607

GARY L. WILSON and SUE A. WILSON,
Defendants.

JURY TRIAL
VOLUME IV OF V

BEFORE THE HONORABLE THOMAS L. LUDINGTON
United States District Judge
United States Post Office Building
1000 Washington Avenue
Bay City, Michigan 48708
Friday, May 24, 2013

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1 Bay City, Michigan

2 Friday, May 24, 2013

3 At 8:48 a.m.

4 (Court, counsel and defendants present; out of the
5 presence of the jury)

6 THE COURT: Good morning.

7 MS. PARKER: Good morning, your Honor.

8 MR. JACOBS: Good morning.

9 MR. PIAZZA: Good morning.

10 THE COURT: Are counsel ready to proceed?

11 MS. PARKER: Government is ready.

12 MR. JACOBS: Yes, sir.

13 MR. PIAZZA: Defense is ready.

14 THE COURT: Could we have the jury, please.

15 (At 8:51 a.m. - jury enters courtroom)

16 THE COURT: Good morning.

17 THE JURY: Good morning.

18 THE COURT: Please be seated.

19 The government, as I recall, you were about to recall a
20 witness.

21 MS. PARKER: That is correct. The government would
22 recall Jeff Hackett to the stand.

23 THE COURT: Sir, you recall that you were placed under
24 oath and that you will continue to provide testimony in that
25 capacity?

1 THE WITNESS: Yes, your Honor.

2 THE COURT: Please have a seat, sir.

3 JEFFREY HACKETT

4 Having previously been duly sworn on 5/22/13, testified as
5 follows:

6 DIRECT EXAMINATION (Continued)

7 BY MS. PARKER:

8 Q. All right. Mr. Hackett, I'm trying to sort of pick up
9 where we left off. I believe you had testified already regarding
10 Exhibits 24A and B and C and 25 which were the inquiries that the
11 Railroad Retirement Board sent out to NAPA Auto Parts, is that
12 correct?

13 A. That's correct.

14 Q. Were there other -- well, you've already indicated there
15 were other subpoenas that you did as part -- or caused to serve
16 as part of the investigation in this case.

17 A. That's correct.

18 Q. And over the course of time, you collected other various
19 records relating to the investigation.

20 A. Correct.

21 Q. I would like to show you Government's Exhibits 40, 41A and
22 also 42 through 48. Do you recognize those?

23 A. Yes, I do.

24 Q. Are those exhibits that you obtained through subpoenas to
25 the Huron National Bank?

1 A. Yes, they are.

2 Q. And is that located in the Rogers City area?

3 A. Yes, it is.

4 Q. And are these for -- let me ask it this way. What is
5 Exhibit 41?

6 A. Are you referring to 41A?

7 Q. I'm sorry, 40. I'm sorry, I misspoke. Sorry.

8 A. Forty is a signature card for Huron National Bank.

9 Q. Is that for the account for GW & SW?

10 A. Yes, GW & SW, Inc., in parentheses, (NAPA, W.W. Auto
11 Parts).

12 Q. Okay.

13 MS. PARKER: Your Honor, I offer Exhibit 40.

14 MR. JACOBS: No objection.

15 MR. PIAZZA: No comment.

16 THE COURT: Forty is received.

17 BY MS. PARKER:

18 Q. And now we will go to 41A. I believe I gave you that one.
19 What is 41A?

20 A. Ah, 41A is a computerized print-out regarding account
21 information, regarding GW & SW, Inc.

22 Q. For what time period?

23 A. It's dated September 30 of 2004.

24 Q. All right.

25 MS. PARKER: Your Honor, I will offer Government's

1 Proposed Exhibit 41A.

2 MR. JACOBS: No objection.

3 MR. PIAZZA: I believe that's already been admitted.

4 MS. PARKER: No, B through F were admitted.

5 MR. PIAZZA: Okay, I'm sorry. Okay. No comment then.

6 THE COURT: It will be received into evidence.

7 BY MS. PARKER:

8 Q. And Exhibit 42 is what kind of document?

9 A. Forty-two is a document relating to a mortgage.

10 Q. And who -- is GW & SW involved in that mortgage?

11 A. It is, yes.

12 Q. Through Huron National Bank?

13 A. Yes.

14 Q. And the time frame of the mortgage?

15 A. July 22nd, 2004.

16 Q. And Exhibits 23, 24, and 25, are those installment loan
17 agreements?

18 A. Forty-three? I'm sorry.

19 Q. Excuse me, sorry. I have dyslexia this morning. It would
20 be 43, 44 and 45.

21 A. Yes, 43, 44 and 45 are installment loan agreements.

22 Q. And 46, 47 and 48 are single payment loan agreements?

23 A. That's correct.

24 MS. PARKER: Your Honor, I offer Government's Proposed
25 Exhibits 42, 43, 44, 45, 46, 47 and 48.

1 MR. JACOBS: I have no objection.

2 MR. PIAZZA: No comment.

3 THE COURT: They will be received into evidence.

4 BY MS. PARKER:

5 Q. All right. Let's go back to Exhibit 40 then and I will ask
6 that that be displayed, please.

7 MS. PARKER: I'm sorry, your Honor, can you turn on the
8 system for us?

9 THE COURT: Yes.

10 BY MS. PARKER:

11 Q. All right. While that's being done, can you refer to the
12 middle of that document and read for us what is in the block
13 entitled, Account Owner Name and Address?

14 A. Yes. Account Owner Name and Address, GW & SW, Inc., (NAPA
15 W & W Auto Parts), Wilson, comma, Gary or Sue or Pochmara, comma,
16 Robert or Pochmara, comma, Maxine, 1095 West 3rd Street, Rogers
17 City, Michigan, 49779, with an account number listed as
18 10034309.

19 Q. And are there four signatures below there?

20 A. There are.

21 Q. And do they correspond to the four people's names you just
22 read to us?

23 A. Yes.

24 Q. Let's go on to 41A briefly. You said that's a print-out of
25 the first page of the bank statement?

1 A. Correct.

2 Q. And, excuse me, at the top, the address is what?

3 A. The address is 1095 West 3rd, Rogers City, Michigan, 49779.

4 Q. And the names for that address are given as what?

5 A. GW & SW, Inc., parentheses, (NAPA W & W Auto Parts), Gary or
6 Sue Wilson, or Robert or Maxine Pochmara.

7 Q. And the date on this?

8 A. September 30, 2004.

9 Q. Turning now to Exhibit 42, you've indicated that was a
10 mortgage dated July 22nd, 2004.

11 A. Correct.

12 Q. And the mortgagor listed on the mortgage is?

13 A. GW & SW, Inc., a Michigan corporation.

14 Q. And the amount of the mortgage?

15 A. \$100,000.

16 Q. And do you see in the middle four initials, four sets of
17 initials?

18 A. I do.

19 Q. Going then to the last -- the front of the second page, I
20 guess I will put it that way -- going to the bottom, do you see a
21 section where it says, "Personally guaranteed by"?

22 A. I do.

23 Q. And what are the names that are written in there?

24 A. The names appear to be Gary Wilson, Sue Wilson, Robert
25 Pochmara and Maxine Pochmara.

1 Q. And then after that, it says, "GW & SW, Incorporated, signed
2 by"?

3 A. Correct.

4 Q. And are those same names represented there?

5 A. Yes.

6 Q. Let's go on to Exhibit 43, please. Now, this is an
7 installment loan agreement?

8 A. Yes, it is.

9 Q. And the date of it?

10 A. July 22nd, 2004.

11 Q. And the amount financed?

12 A. The amount financed, \$100,208.

13 Q. And in the middle, do you see where it says, "security"?
14 Maybe above the middle.

15 A. Yes, I do.

16 Q. Sorry.

17 A. Security, yes, I see it.

18 Q. All right. And what does it say that is provided as
19 security?

20 A. "Secured by real estate mortgage dated July
21 22nd, 2004. Also secured by an all-asset filing
22 dated July 22nd, 2004."

23 Q. Okay. And then at the bottom, do you see a guarantor's
24 agreement?

25 A. I do.

1 Q. And the purported signatures there are?

2 A. Gary Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara.

3 Q. And to the right of that, it says, "For GW & SW,
4 Incorporated?"

5 A. Correct.

6 Q. What does it say there?

7 A. "GW & SW, Incorporated, NAPA W & W Auto Parts, Gary
8 Wilson --"

9 Q. Excuse me just for a second. That NAPA W & W Auto Parts, is
10 that typed in like GW & SW?

11 A. No, that's handwritten.

12 Q. Okay. And what are the purported signatures?

13 A. Gary Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara.

14 Q. Going on to Exhibit 44, this is another installment loan
15 agreement, is that correct?

16 A. Hold on. Yes.

17 Q. And the date?

18 A. December 15th, 2005.

19 Q. The amount financed?

20 A. \$100,050.

21 Q. And again, the indication is it's secured by a real estate
22 mortgage?

23 A. "Secured by real estate mortgage dated July
24 22nd, 2004. Also secured by an all-asset filing
25 dated July 22nd, 2004."

1 Q. And down in the lower left-hand corner, a guarantor's
2 agreement?

3 A. Correct. It's dated December 15, 2005.

4 Q. And the names signed -- purportedly signed?

5 A. Gary Wilson, Sue Wilson, Robert Pochmara and Maxine
6 Pochmara.

7 Q. All right. And to the right of that, it says, "Borrower's
8 agreement," what is typed in there?

9 A. Typed in there is, "NAPA W & W Auto Parts, GW & SW, Inc."

10 Q. And then the purported signatures?

11 A. Gary Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara.

12 Q. Going on to Exhibit 45, please. This is yet another
13 installment loan agreement?

14 A. Correct.

15 Q. And the date?

16 A. April 10, 2008.

17 Q. And the amount?

18 A. \$99,925.

19 Q. And again, at the bottom in two places, are there purported
20 signatures?

21 A. Yes, there are.

22 Q. And for whom?

23 A. Under guarantor's agreement, Gary Wilson, Sue Wilson, Robert
24 Pochmara, Maxine Pochmara. And under --

25 Q. Sorry, go ahead.

1 A. Sorry -- borrower's agreement, Gary Wilson, Sue Wilson,
2 Robert Pochmara, Maxine Pochmara.

3 Q. All right. Let's go on to Exhibit 46. Is this a single
4 payment loan agreement?

5 A. Yes, it is.

6 Q. And what is the date of that agreement?

7 A. November 21st, 2005.

8 Q. And the amount financed?

9 A. \$5,000.

10 Q. And down under the guarantee -- excuse me, guarantor's
11 agreement, how is that purportedly signed?

12 A. Two signatures, Gary Wilson, Robert Pochmara.

13 Q. And going to the right under borrower's agreement, what are
14 the signatures purportedly there?

15 A. Gary Wilson and Robert Pochmara.

16 Q. No Maxine or Sue?

17 A. No, not that I see.

18 Q. Going on to Exhibit 47, this is another single payment loan
19 agreement?

20 A. Yes, it is.

21 Q. And the date?

22 A. January 9, 2007.

23 Q. The amount?

24 A. \$15,000.

25 Q. And who are the signatories to this agreement?

1 A. Gary Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara.

2 Q. That's on both sides of the exhibit?

3 A. Yes.

4 Q. And Exhibit 48?

5 A. Yes, I have it.

6 Q. That's a single payment loan agreement again?

7 A. Yes, it is.

8 Q. What's the date?

9 A. January 8, 2008.

10 Q. And what's the amount?

11 A. \$15,000.

12 Q. And the purported signatories to the agreement?

13 A. Gary Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara.

14 Q. Next, I would like to show you Government's Proposed

15 Exhibits 32 and 33. Do you recognize those?

16 A. I do.

17 Q. What are those two documents? How are they titled?

18 A. Corporation Information Update.

19 Q. And for what corporation?

20 A. GW & SW, Inc.

21 Q. And Exhibit 32 is for what date? Or year, I should ask,

22 perhaps.

23 A. 1998.

24 Q. And Exhibit 33 is for what date?

25 A. 1999.

1 MS. PARKER: Your Honor, I offer Government's Proposed
2 Exhibits 32 and 33.

3 MR. JACOBS: No objection, your Honor.

4 MR. PIAZZA: No comment.

5 THE COURT: Exhibits 32 and 33 are received.

6 MS. PARKER:

7 Q. And I would like to ask that Exhibit 32 be displayed,
8 please.

9 Again, this is a document entitled Corporation
10 Information Update?

11 A. That's correct.

12 Q. And it has what address at the top?

13 A. GW & SW, Inc., 1095 West 3rd Street, Rogers City, Michigan,
14 49779.

15 Q. And below in Section 5, who are listed as the officers of
16 the corporation?

17 A. Under President, Gary L. Wilson; Secretary, Sue A. Wilson;
18 Treasurer, Maxine Pochmara.

19 Q. And what is the address given for Gary Wilson?

20 A. 1329 Klee Road, Rogers City, Michigan, 49779.

21 Q. Same for Sue?

22 A. That's correct, same address.

23 Q. What about Maxine Pochmara?

24 A. 1350 Klee Road, Rogers City, Michigan, 49779.

25 Q. And is there a purported signature there?

1 A. There is a signature at the bottom, yes.

2 Q. I'm sorry?

3 A. Yes, there is a signature at the bottom.

4 Q. And what is that -- what's written there?

5 A. Sue A. Wilson.

6 Q. Title?

7 A. Co-owner.

8 Q. And date?

9 A. March 2nd, '98, 3/2/98.

10 Q. All right. Going on to the next one, Exhibit 33, is for
11 1999?

12 A. Yes.

13 Q. The address at the top for the corporate name and mailing
14 address?

15 A. GW & SW, Inc., 1095 West 3rd Street, Rogers City, Michigan,
16 49779.

17 Q. And who are the officers listed there?

18 A. President, Gary L. Wilson; Vice President, Maxine Pochmara;
19 Secretary, Sue Wilson; Treasurer, Sue Wilson.

20 Q. And the address given for all four?

21 A. 1095 West 3rd Street, Rogers City, Michigan, 49779.

22 Q. And what is the name signed at the bottom?

23 A. Sue Wilson.

24 Q. And title?

25 A. Sec/Treas.

1 Q. And the date?

2 A. 3/5/99.

3 Q. Next, I would like to show you Government's Proposed
4 Exhibits 160A and B. What are those?

5 A. These are wages or earnings that were paid to Maxine
6 Pochmara.

7 Q. By?

8 A. Northeast Michigan Community Mental Health.

9 Q. And are they for the period 1997 to 2010?

10 A. Yes, they are.

11 MS. PARKER: Your Honor, I would offer Government's
12 Proposed Exhibits 160A and B.

13 MR. PIAZZA: May I see the exhibit, your Honor? If I
14 may voir dire?

15 THE COURT: Yes, if you could use the podium, please.

16 MR. PIAZZA: Yeah, okay.

17 BY MR. PIAZZA:

18 Q. In the A exhibit before you, that has sub-records relating
19 to wages and items taken out of Maxine Pochmara, is that
20 correct?

21 A. Correct.

22 Q. But those years in Exhibit -- you know, A, is limited to
23 what, 1997, '98, '99?

24 A. That's correct.

25 Q. Okay. And B is a different type of record of those years,

1 is that correct? Or is that in addition?

2 A. It appears to be so, yes.

3 Q. Now, Exhibit A though, you don't have the remaining years in
4 that format, in that exhibit, do you?

5 A. No. That format is for '97, '98 and '99.

6 MR. PIAZZA: I would object to these. Exhibit, I
7 believe it's 160A, only has three years, one in 1997 which isn't
8 relevant to the proceedings, but only has '98 and '99. They are
9 missing the other remaining years in that format so they are
10 incomplete. So I would object.

11 MS. PARKER: Your Honor, together, they cover the
12 period -- I would represent to the Court, that the entity changed
13 their computers over time and the nature of their print-outs
14 simply changed. There has been a certificate of authenticity.
15 These documents were provided in discovery months ago. Copies
16 were given as marked exhibits to counsel a week ago and --

17 THE COURT: The only question I have is the time period
18 that they cover.

19 MS. PARKER: Well, they do go from '97 to 2010 but
20 that's sort of the nature of the way they are on the computer
21 print-out. The pages roll through.

22 THE COURT: I -- I misunderstood. I thought they were
23 actually limited to a period of time that was outside of the
24 dates of the indictment. They actually overlap.

25 MS. PARKER: They bracket it and slightly exceed by a

1 year at either end.

2 THE COURT: Did you understand that, sir?

3 MR. PIAZZA: Yes, I do.

4 THE COURT: Okay. I'm going to overrule the
5 objection.

6 BY MS. PARKER:

7 Q. Let's go to the first page of Exhibit 160A then for display,
8 please.

9 All right. This document may be a little bit difficult
10 at first look to interpret. Have you spent a little time looking
11 at this so you can follow through on this?

12 A. Yes.

13 Q. All right. On the top of the page, do you see any columns
14 across the top?

15 A. Yes.

16 Q. And do they have any headings?

17 A. Yes, they do.

18 Q. Where are those headings located?

19 A. Going from left to right, the last name, first name, check
20 number, period ending date, total hours, REG/VAC/OC hours,
21 overtime hours, REG/VAC/OC pay, overtime pay, special pay, gross
22 pay, federal tax, FICA tax, state tax.

23 Q. And is that at the very top of the page or is that --

24 A. I'm sorry. That's about a third up from the bottom.

25 Q. All right. But is there an entry at the very top of the

1 page on the left with the name?

2 A. There is.

3 Q. And that is?

4 A. Pochmara, Maxine.

5 Q. Going to the second page of Exhibit 160A, at this point, are
6 there captions going all the way across?

7 A. Yes, there are.

8 Q. All right. And below the caption, there is some -- some
9 dark spots.

10 A. Correct.

11 Q. And what's your understanding of what that is?

12 A. That those were for another employee of the same corporation
13 or business and they removed that employee's name.

14 Q. So the first couple entries there do not belong to Maxine
15 Pochmara whose records you were subpoenaing.

16 A. That's correct.

17 Q. But then the captions would apply throughout the page.

18 A. Correct.

19 Q. And to the right of the name, the third column or heading is
20 what?

21 A. Total hours.

22 Q. All right. And then below that, that has the hours for what
23 time period for Maxine Pochmara?

24 A. From January 3rd, 1998 --

25 Q. Going to what?

- 1 A. On this page, until December 19th of '98.
- 2 Q. And then a total number of hours at the bottom?
- 3 A. That's correct.
- 4 Q. And the next page is 1999?
- 5 A. Yes.
- 6 Q. And this page is solely for Maxine Pochmara?
- 7 A. Yes.
- 8 Q. And again, there is a column, total hours?
- 9 A. Total hours are listed at the bottom as 2,118.5.
- 10 Q. And the time period covered there?
- 11 A. January 2nd of 1999 until December 18th of 1999.
- 12 Q. And throughout that time, is there at least 80 hours with
- 13 the exception of one week posted?
- 14 A. Yes, with the exception of one week posted, they are all at
- 15 least 80 hours.
- 16 Q. Let's go on to Exhibit 160B. Exhibit 160A left off in 1999,
- 17 correct?
- 18 A. That's correct.
- 19 Q. And 160B picks up where?
- 20 A. The date of January 13, 2000.
- 21 Q. And again, this is a record for whom?
- 22 A. Maxine Pochmara.
- 23 Q. And at the top of the document, in the middle, it lists the
- 24 name of the employer?
- 25 A. It does, to the far right.

1 Q. As?

2 A. Maxine Pochmara.

3 Q. And for the employer? I'm sorry.

4 A. I'm sorry, employer, Northeast Michigan Community Mental
5 Health.

6 Q. And below that?

7 A. Employee pay history report, U.S. payroll.

8 Q. And is there a column for hours on this document, also?

9 A. There is.

10 Q. Okay. Going on to the next page, does it continue with the
11 hours for 2010?

12 A. Yes. It continues that way all the way up until September
13 9th of 2010.

14 Q. And then the next page goes through -- goes to the end of
15 the year?

16 A. I'm sorry, which page are you on? Three?

17 Q. The third page for 2000.

18 A. Yes, it goes to September 28 of 2000.

19 Q. All right. And the hours would be consistent with a
20 full-time employment?

21 A. The hours are consistently -- they appear to be at least 80
22 hours for each pay period.

23 Q. All right. The next page then would be starting on January
24 11, 2001?

25 A. January 11, 2001, yes.

1 Q. Again, for Maxine Pochmara?

2 A. Yes.

3 Q. And continuing in the same format through the end of the
4 exhibit, for the various years?

5 A. Yes.

6 Q. Next, I would like to show you Government's Proposed
7 Exhibit 1. Do you recognize that, sir?

8 A. Yes, I do.

9 Q. Is that a chart that basically summarizes various matters
10 relating to the investigation in this case?

11 A. Yes.

12 Q. Specifically regarding the earnings reported to Social
13 Security for Maxine Pochmara from GW & SW Auto Parts?

14 A. Yes.

15 Q. And also from the Northeast Michigan Community Mental Health
16 Authority?

17 A. Yes.

18 Q. And also the GW & SW taxable income?

19 A. Yes, that's correct.

20 Q. And how was this -- is this chart based on the matters now
21 that are already in evidence?

22 A. Yes.

23 Q. Basically taking numbers off the exhibits and plotting them
24 on the chart and then putting them on a graph below and

25 connecting the dots?

1 A. Correct.

2 Q. All right.

3 MS. PARKER: Your Honor, I offer Government's Proposed
4 Exhibit 1.

5 MR. JACOBS: Brief voir dire on Exhibit 1, your Honor?

6 THE COURT: All right.

7 BY MR. JACOBS:

8 Q. Sir, the summary shows, like earnings reported. Do
9 summaries also show the monies actually paid in, like towards
10 Social Security?

11 A. Are you referring to column one, earnings as reported?

12 Q. Yes.

13 A. No, that just lists what was reported by Maxine Pochmara's
14 employer or from GW & SW Auto Parts to the Social Security
15 Administration.

16 Q. Earnings reported, not monies paid in, correct?

17 A. Correct.

18 MR. JACOBS: No further questions. No objection, your
19 Honor.

20 MS. PARKER: Okay.

21 MR. PIAZZA: No comment, your Honor.

22 THE COURT: Received.

23 MS. PARKER: May they be received, your Honor?

24 THE COURT: It will.

25 BY MS. PARKER:

1 Q. I would ask that Exhibit 1 be displayed, please.

2 All right. Let's go to the top of this. On the far
3 left, there is a column. What is that first column on the left,
4 please?

5 A. Reporting year.

6 Q. And below that, the first year is?

7 A. 1998.

8 Q. And the last year?

9 A. Is 2010.

10 Q. And the next column to the right is what?

11 A. Earnings as reported to SSA, meaning Social Security
12 Administration, for Maxine Pochmara from GW & SW Auto Parts.

13 Q. And is there a color outline to that box?

14 A. Yes, it's red.

15 Q. What color?

16 A. Red.

17 Q. Okay. To the right of that there is another column labeled
18 what?

19 A. Summary of earnings from Northeast Michigan Community Mental
20 Health Authority.

21 Q. And to the right of that?

22 A. GW & SW taxable income.

23 Q. All right. I should have asked you this. The one box was
24 outlined in red. The middle box regarding the earnings from
25 Northeast Michigan, how is that outlined, what color?

- 1 A. A green.
- 2 Q. And the one for GW & SW taxable income?
- 3 A. I guess violet, purple.
- 4 Q. Okay. And the numbers below there, some of those are in
- 5 black and some of those are in red?
- 6 A. Correct.
- 7 Q. And what -- why is that?
- 8 A. Those in red are negative earnings or showing a loss.
- 9 Q. And then below that, there is a graph?
- 10 A. That's correct.
- 11 Q. And there is three different-colored lines.
- 12 A. That's correct.
- 13 Q. What does the red line correspond to?
- 14 A. The red line corresponds to the earnings as reported to
- 15 the Social Security Administration for Maxine Pochmara from GW &
- 16 SW Auto Parts.
- 17 Q. The green line?
- 18 A. The green line is the summary of earnings from Northeast
- 19 Michigan Community Mental Health Authority.
- 20 Q. Again, for Maxine Pochmara?
- 21 A. For Maxine Pochmara.
- 22 Q. And the violet line?
- 23 A. GW & SW taxable income.
- 24 Q. And on the vertical access of the graph, the far left side,
- 25 what numbers are there?

1 A. At the very top, forty thousand, next, thirty-five thousand,
2 thirty thousand, twenty-five thousand, twenty thousand, fifteen
3 thousand, ten thousand, five thousand, zero, negative five
4 thousand, negative ten thousand.

5 Q. And then the horizontal access is covering what time
6 periods?

7 A. The years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005,
8 2006, 2007, 2008, 2009, 2010.

9 Q. Okay. Based on your employment, are you familiar with the
10 threshold earning limits for disability when it changed from four
11 hundred?

12 A. Yes.

13 Q. When?

14 A. In 2007.

15 Q. And as part of your involvement in the investigation, did
16 you write up reports of your interviews of various witnesses?

17 A. Yes.

18 Q. Did you prepare reports for witnesses Stanley Krajnik and
19 Steve Porter?

20 A. I did.

21 Q. And make those available for disclosure and discovery?

22 A. Yes.

23 Q. And looking at the evidence in this case, was Mr. Pochmara
24 over the threshold for Railroad Retirement Board income for every
25 month between January of 1998 and March of 1999?

1 MR. PIAZZA: Your Honor, I'm going to object to that.
2 First of all, this witness hasn't been qualified as an expert.
3 Secondly, that's a fact decision for the jury to make a
4 determination.

5 THE COURT: I don't quite understand the question.

6 MS. PARKER: Perhaps I can rephrase it.

7 THE COURT: Okay.

8 BY MS. PARKER:

9 Q. All right. You're aware that there were earning limitations
10 for Robert Pochmara relative to his railroad retirement --
11 disability retirement?

12 A. That's correct.

13 Q. And have you compared the earnings reported for Maxine
14 Pochmara for that time period that Mr. Pochmara was on railroad
15 disability?

16 A. Yes.

17 Q. I should say the earnings from -- reported by GW & SW,
18 Incorporated.

19 A. Yes.

20 Q. And how did those earnings, monthly earnings compare to the
21 limit?

22 MR. PIAZZA: I'm going to object, to that, your Honor.
23 I don't see, you know, comparing what one person got paid to the
24 limit on somebody else that is on disability, that's a question
25 of fact for the jury to make a determination, not for the witness

1 to, you know, make an assumption on.

2 THE COURT: Well, it's not a complicated equation. As
3 soon as the witness -- the witness testifies concerning what the
4 amount of limitation it is, respectfully, it's just drawing a
5 conclusion.

6 MS. PARKER: And I think that's within this witness's
7 province.

8 THE COURT: I agree. I will overrule the objection.

9 THE WITNESS: Can you ask the question again. I'm
10 sorry.

11 MS. PARKER: I will try.

12 BY MS. PARKER:

13 Q. Did the earnings reported as being Maxine Pochmara's
14 earnings from GW & SW between January of 1998 and March of 2009,
15 how did that compare to the earning limitations that applied to
16 Robert Pochmara?

17 A. Those monthly earnings were in excess of what was allowed
18 for a disability annuitant in the same months and/or year.

19 Q. In fact, are there earning limitations for people who are on
20 just regular old age retirement?

21 A. Up to their full retirement age, yes.

22 Q. All right. And did those earnings exceed that?

23 MR. JACOBS: Your Honor, I would object. That's not
24 relevant whether the earnings exceeded for somebody who is
25 normally on retirement. I mean, how do we know what earning

1 limits there are for someone who is normally retired?

2 MS. PARKER: Well, your Honor, I think the assertion
3 that I understood the defense to be making was that they thought
4 he was on retirement. They didn't know he was on disability
5 retirement.

6 THE COURT: We have heard that. The witness can respond
7 to the question.

8 THE WITNESS: They exceeded -- they would exceed
9 earnings restrictions for someone on a regular retirement as
10 well.

11 BY MS. PARKER:

12 Q. As part of your investigation, did you talk to Gary Wilson
13 on two different occasions?

14 A. Yes.

15 Q. When was the first occasion?

16 A. November of 2008.

17 Q. And when was the next time?

18 A. January of 2010.

19 Q. So it would be a little more than a year later?

20 A. That's correct.

21 Q. Between those two interviews, had you done, as part of your
22 investigation, gathering some of the documents that are now in
23 evidence?

24 A. That's correct. There were further Grand Jury subpoenas
25 issued.

1 Q. All right. And did you obtain documents from those?

2 A. Yes.

3 Q. And did that include records from places such as the Huron
4 National Bank?

5 A. Yes.

6 Q. And looking at those records and concerning what you've been
7 told on your first interview, was that -- how did that affect
8 your thinking?

9 A. It caused me --

10 MR. JACOBS: I would object to what his thinking was,
11 your Honor. How would that affect his thinking?

12 MS. PARKER: I think it's kind of a res gestae thing,
13 judge.

14 MR. JACOBS: For this witness to testify as to my
15 client's res gestae?

16 THE COURT: I'm not sure whose mental impression you're
17 asking for. Is it --

18 MS. PARKER: The witness's.

19 THE COURT: -- the witness's? Could you ask the
20 question one more time. I need to think about it.

21 MS. PARKER: I will try to do that.

22 BY MS. PARKER:

23 Q. Having reviewed the documents that you were collecting in
24 the course of the investigation, including the financial
25 documents from Huron National Bank, how did that affect your

1 thinking on the course of the investigation?

2 THE COURT: I will sustain the objection.

3 MS. PARKER: All right.

4 BY MS. PARKER:

5 Q. Let me ask it this way. When you went to talk to Mr. Wilson
6 the second time, did you have additional questions you were
7 hoping to get answers to?

8 A. Yes.

9 Q. All right. And when you met with him the second time, did
10 you show him some of the documents that you had obtained as part
11 of the investigation?

12 A. That was the first time, in November of 2008.

13 Q. Okay. What did you show him?

14 A. In November of 2008, myself and Agent Myers who is another
15 agent with our agency, showed Mr. Wilson the OI-41, which were
16 the -- which was the wage request for Robert Pochmara which was
17 received back in our office, as well as the articles of
18 incorporation, and also a letter that had the signature of Sue
19 Wilson on it.

20 Q. All right. So what you are referring to as an OI form 41,
21 is that what's now marked as Exhibit 41A?

22 A. I believe so.

23 Q. Excuse me. I think I misspoke, 24A.

24 A. I don't have it in front of me so I can't --

25 Q. All right. Let's fix that. I have handed you my copies of

1 24A, B and C and also 25. Do you see those?

2 A. Yes.

3 Q. What are those?

4 A. Exhibit 24A is the form OI-41 which is a request for wages,
5 for employment. It's a two-page form. Exhibit No. 24B is a
6 letter, a cover letter that was received back with this form when
7 it was completed. And Exhibit 24C is an annual meeting of
8 shareholders and board of directors of GW & SW, Inc., a document
9 that was received along with 24B.

10 Q. All right. So if I understood you correctly, you said the
11 first time you went to see Mr. Wilson, you showed him some
12 documents.

13 A. Yes.

14 Q. Which ones were they, the 24 set or the 25 set or both?

15 A. The 24 set.

16 Q. Did you have the 25 set yet?

17 A. No, we did not.

18 Q. Okay. So the first time you went to see -- talk to Mr.
19 Wilson about this matter, were you asking him about the
20 information contained on that form?

21 A. Yes.

22 Q. Did you ask him about the signature on the form?

23 A. I did.

24 Q. What did he say about that signature?

25 A. I asked Mr. Wilson if the signature on this form was that of

1 his wife.

2 Q. And what was his response?

3 A. He stated yes.

4 Q. And --

5 MR. PIAZZA: Your Honor, I will object because that's a
6 statement by a co-defendant, you know, that can't be used against
7 my client under *Bruton vs. United States*.

8 THE COURT: Do you --

9 MS. PARKER: Pardon?

10 THE COURT: Go ahead. You were responding.

11 MS. PARKER: Did you wish me to respond? I'm sorry,
12 that's what I didn't hear.

13 THE COURT: Yes. The gentleman was relying on *Bruton*
14 for his objection to the statement.

15 MS. PARKER: I think at this point, it's 801(d) (2) (e) .

16 THE COURT: I -- I would agree.

17 MR. PIAZZA: I don't think they've established, you
18 know, under -- the conspiracy of my client's membership at this
19 time.

20 THE COURT: Respectfully, there are sufficient
21 preliminary proofs at this juncture for the Court to admit the
22 response.

23 BY MS. PARKER:

24 Q. So at this point, then, did you question Mr. Wilson
25 regarding the information that was on that form?

1 A. Yes, I did.

2 Q. And did he confirm that Robert Pochmara worked at the NAPA
3 Auto Parts Store during the time period?

4 A. Yes, he did.

5 Q. And did he confirm that for that work, Maxine Pochmara was
6 paid those wages reported on that form?

7 A. That's correct.

8 Q. Okay. So the next step in the investigation -- after that,
9 is that when you received the Exhibit 25 response?

10 A. That's correct. We sent out -- I sent out an additional
11 OI-41 and Government's Exhibit 25 was the response to that.

12 Q. So that came in after your initial interview.

13 A. That's correct.

14 Q. And you continued to investigate over the course of
15 basically the next year, 2009.

16 A. Correct.

17 Q. And in 2010, January of 2010, I believe you indicated you
18 went back to speak to Mr. Wilson again.

19 A. That's correct.

20 Q. At this time, did he in any way change his explanation
21 regarding who was the worker and who was getting paid?

22 A. No.

23 Q. I would like to ask you to turn back to Exhibit 42 for a
24 moment, please, the front of the second page of that mortgage.

25 Do you see that?

1 A. Yes.

2 Q. Below the signatures of -- purported signatures of Gary
3 Wilson, Sue Wilson, Robert Pochmara, Maxine Pochmara, there is a
4 section that begins, "The foregoing instrument was acknowledged
5 before me"?

6 A. Yes, I see that.

7 Q. Can you read that for us?

8 A. "The foregoing instrument was acknowledged
9 before me this July 22nd, 2004, by Gary Wilson,
10 Sue Wilson, Robert Pochmara and Maxine Pochmara
11 as officers of GW & SW, Inc. My commission expires
12 January 12, 2006. Erik Nadolsky, Notary Public,
13 Presque Isle County, Michigan."

14 "This instrument was prepared by and returned
15 to Huron National Bank, 200 East Erie, Rogers City,
16 Michigan, 49779."

17 Q. And for the court reporter, will you spell Erik Nadolsky's
18 name for us?

19 A. First name, Erik, E-R-I-K, last name, Nadolsky,
20 N-A-D-O-L-S-K-Y.

21 Q. And that represents that he is a notary?

22 A. From what I gather. That's on the notary public line.

23 MS. PARKER: Thank you, your Honor. I will pass the
24 witness.

25 THE COURT: Cross?

1 MR. JACOBS: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. JACOBS:

4 Q. How old are you, Special Agent Hackett?

5 A. I am 44.

6 Q. Forty-four. And is that the correct title, are you supposed
7 to be -- you're a special agent?

8 A. Special agent, correct.

9 Q. And how long have you been with the Railroad Retirement
10 Board?

11 A. August, 2002.

12 Q. And you're an investigator, is that fair to say?

13 A. That's correct.

14 Q. Let's talk about this Exhibit 24, the A, B and C. We know
15 that there is a back stamp on it -- back stamp on it that notes
16 when it came back into the office. It came back in, I think,
17 November 7th of 2008. Is that correct?

18 A. That's correct.

19 Q. Can you tell when it went out?

20 A. No, it is not a dated form.

21 Q. Right. So we don't know how long somebody had possession of
22 it before they sent it back in. But we know that you must have
23 sent it out after -- well, of course, the referral from Detroit
24 was in September. So it had to go out after September, of
25 course.

1 A. That's correct.

2 Q. All right. You don't have any independent recollection of
3 when it went out?

4 A. No, sir.

5 Q. No. All right. These -- Mr. Stanley Krajnik or Krajnik,
6 Z-R-A-N-I-K, he is the individual who you interviewed -- he is
7 one of the individuals you interviewed back in January of 2010.
8 Do you recall that?

9 A. Are referring to Stanley Krajnik?

10 Q. Krajnik, Krajnik. I know I'm the one who is slaughtering
11 his name.

12 A. Yes.

13 Q. Krajnik. In fact, it was January 13th of 2010, you
14 interviewed him, is that correct?

15 A. That's correct.

16 Q. And at that time, did he tell you that he had gone to the
17 NAPA Store approximately ten to twelve times a week, he would
18 pick up parts at the NAPA Store?

19 A. I don't have the report or interview in front of me but that
20 sounds about right.

21 Q. Sounds about right?

22 A. Sounds about right.

23 Q. Sir, do you believe during the course of your investigation
24 before, oh, like before 2010, that Maxine and Robert Pochmara
25 were married?

1 MS. PARKER: Objection. Relevance.

2 MR. JACOBS: Well, I think it's very relevant, your
3 Honor, as to how they held themselves out on these various
4 documents. They held themselves out as husband and wife more
5 than once. They signed mortgages as husband and wife.

6 MS. PARKER: Judge, this is a narrative response
7 supplying information that I submit is objectionable.

8 MR. JACOBS: It goes to their character, your Honor, as
9 far as whether they purported being married.

10 MS. PARKER: Objection, your Honor. Character of --

11 THE COURT: I'm going to sustain the objection.

12 BY MR. JACOBS:

13 Q. Then I will ask it this way. During the course of your
14 investigation, did you determine that Robert and Pochmara --
15 Robert and Maxine Pochmara were divorced September 28th of
16 1981?

17 MS. PARKER: Objection.

18 THE COURT: Sustained.

19 BY MR. JACOBS:

20 Q. During the course of your investigation, you obtained
21 many checks, bank records and copies of checks, is that fair to
22 say?

23 A. Yes, sir.

24 Q. And with these checks, I believe earlier, you testified you
25 couldn't get copies of checks prior to 2005?

1 A. I believe that's correct.

2 Q. Because banks wouldn't necessarily have the actual copies,
3 is that fair to say?

4 A. Correct.

5 Q. All right. During the course of your investigation, did you
6 find checks written or designated as coming from the NAPA Store
7 signed by Maxine Pochmara?

8 A. I believe there were a few.

9 Q. There were a few signed by her.

10 A. Yes.

11 Q. Exhibit 24 -- now, I will go on to the other railroad type
12 exhibits. This Exhibit No. 10, and I will just kind of identify
13 it for you, that was the Employee Annuity Booklet, the very big
14 booklet, that booklet went out to employees, is that correct?

15 A. That's correct. Those booklets go out to employees.

16 Q. And they don't necessarily go out to people in the general
17 public, just the employees.

18 A. Only if you request one for some reason. No.

19 Q. The Employee Disability Benefit Notice goes out to
20 employees, is that correct?

21 A. That's correct.

22 Q. The employee's spouse -- Exhibit 12, the Employee and Spouse
23 Annuity, Things That Must be Reported, that goes out to the
24 employee.

25 A. Employee or eligible family member, correct.

1 Q. Employee or eligible family member. So in this case, it
2 would be Robert Pochmara and -- and if they were married, his
3 spouse, Maxine Pochmara.

4 A. That's correct.

5 Q. The application actually filled out -- No. 20, filled out by
6 the employee, that's confidential, isn't it?

7 A. That's correct.

8 Q. The second application, Exhibit No. 21, the one with the
9 typed -- looked like computer-generated type equipment, is
10 another -- another application or at least it's called an
11 application, that's also confidential, is that correct?

12 A. That's correct.

13 Q. The Exhibit 22, the statements regarding family and
14 earnings, that's by Robert Pochmara and that's confidential, is
15 that correct?

16 A. Correct.

17 Q. All right. And lastly, the last exhibit regarding that,
18 Exhibit 23, the Continued Disability Report by Robert Pochmara
19 that you all received on August 22nd of 2008, signed by Robert
20 Pochmara, that's also confidential, is that correct?

21 A. That's correct.

22 Q. These loan installment agreements and bank notes, do people
23 sometimes refinance a note that's a couple years old?

24 MS. PARKER: Objection.

25 MR. JACOBS: Just a general observation by the witness,

1 your Honor, as to what -- whether we can -- I will ask it this
2 way.

3 BY MR. JACOBS:

4 Q. Can you tell when you look at one of these installment loan
5 agreements that's dated two years after a prior installment loan
6 agreement, whether the individual is just refinancing? Can you
7 tell?

8 MR. JACOBS: He can answer that.

9 MS. PARKER: Objection. Calls for speculation.

10 THE COURT: Sustained.

11 BY MR. JACOBS:

12 Q. Exhibit 160 for Maxine Pochmara actually showed the Social
13 Security monies or FICA monies withdrawn and sent in to Social
14 Security. No?

15 A. I don't have it in front of me, counselor.

16 MS. PARKER: You should still have it there.

17 THE WITNESS: One sixty? Oh, I'm sorry, counselor, I do
18 have it. I'm sorry.

19 BY MR. JACOBS:

20 Q. Oh. Exhibit 160A actually shows Social Security monies
21 actually paid in by Maxine Pochmara, is that correct? It has a
22 breakdown on FICA and all those monies she actually paid in
23 toward Social Security --

24 A. FICA, correct.

25 Q. -- is that fair to say? And 160B is a different format.

1 From January 13th, 2000 on, it quit showing the actual
2 withdrawals, is that correct?

3 MS. PARKER: Objection. Relevance.

4 MR. JACOBS: I think it is relevant as far as they are
5 saying the monies paid in to Social Security, your Honor. If she
6 didn't pay money in to Social Security, or they can't show that,
7 I think it would be relevant as to Count 3.

8 MS. PARKER: No.

9 MR. PIAZZA: Not only that, your Honor, but --

10 MS. PARKER: It's a different --

11 MR. JACOBS: Not just earnings reported but monies paid
12 in.

13 MS. PARKER: From GW & SW.

14 MR. JACOBS: By Maxine Pochmara.

15 MS. PARKER: No, by GW & SW.

16 THE COURT: The objection is sustained.

17 MR. PIAZZA: For the record, I would ask that the Court
18 overrule the objection because it's a document that was
19 introduced by the government and defense counsel is now inquiring
20 about it.

21 MR. JACOBS: All I have to go by is the document, your
22 Honor.

23 THE COURT: If we can stop for just a moment. I didn't
24 quite understand the objection.

25 MR. PIAZZA: It's my understanding the question is

1 referring to a document that has been introduced and admitted
2 into evidence. So I believe the whole document can be, you know,
3 questioned about. And I believe that's where Mr. Jacobs is
4 going. Unless I'm misunderstanding.

5 MR. JACOBS: That's correct, your Honor.

6 THE COURT: I think -- I think you misunderstood the
7 objection. And I'm going to sustain the objection. If you wish
8 to reask the question, you may.

9 MR. JACOBS: I will move on and let Mr. Piazza go into
10 that if he wants.

11 THE COURT: Okay.

12 BY MR. JACOBS:

13 Q. That Exhibit 1, the summary, it's money reported or earnings
14 reported. It's not actually the monies that were paid in, is
15 that correct?

16 A. That's correct. It's a summary of earnings as reported.

17 Q. When you say that the monies paid to Maxine Pochmara would
18 exceed a regular retirement limitation, for who, for somebody
19 retiring from General Motors?

20 A. Someone retiring as a former railroad worker.

21 Q. So the monies paid or monies received by Maxine Pochmara
22 would be -- would exceed the limit requirements even for someone
23 who retired from the railroad, is that what you're saying?

24 A. Can you state that one more time?

25 Q. Monies, weekly or monthly, paid in for Maxine Pochmara would

1 exceed the limit requirement for a retiree from the railroad.

2 A. That's correct.

3 Q. Is that common knowledge? From -- you know from working at
4 the railroad, is that fair to say?

5 A. I --

6 Q. Sure it is.

7 A. Yeah.

8 Q. Now, these interviews you had with my client, that first
9 interview in January of 2010, now, that was at my client's store,
10 at the NAPA Store, wasn't it?

11 A. The first interview was January of 2008.

12 Q. I'm sorry, the first interview in January of 2008, it was at
13 the NAPA Store.

14 A. Correct.

15 Q. He was working, is that correct?

16 A. Correct.

17 Q. And you were asking him questions and during working hours,
18 is that fair to say?

19 A. That's correct.

20 Q. Store was still open, is that fair to say?

21 A. Yes, sir.

22 Q. We didn't tape-record that interview, did we?

23 A. No.

24 Q. We didn't write down or have him give a written statement,
25 did we? In November of 2008?

1 A. Not from memory, no.

2 Q. All right. Isn't it in January of 2010, where you
3 tape-record the statement?

4 A. It was tape-recorded.

5 Q. All right. And in January of 2010, is where you would write
6 out your understanding of what he said and have Mr. Wilson sign
7 that document, is that correct?

8 A. That's correct. It's written out and then read back by Mr.
9 Wilson.

10 Q. It's written out by you.

11 A. It's written out by me.

12 Q. Yeah. All right. Now, Robert Pochmara always told you
13 that -- excuse me -- Gary Wilson always told you that Maxine
14 Pochmara was an investor in their business?

15 A. It wasn't exactly in those words.

16 Q. That she bought in?

17 MS. PARKER: Objection.

18 MR. JACOBS: Well, it is very relevant, your Honor.

19 MS. PARKER: It's 801. *McDaniel, United States vs.*
20 *McDaniel.*

21 THE COURT: Sustained.

22 BY MR. JACOBS:

23 Q. During the course of your investigation, were you able to
24 determine that anyone bought into the business?

25 MS. PARKER: Objection. Relevance.

1 MR. JACOBS: It's relevant. It's regarding exhibits
2 that's already been accepted into evidence, Exhibit, I think it's
3 202.

4 THE COURT: But the question, I think, that she is
5 raising is the relevance of the investment to the issues that are
6 related to the case.

7 MR. JACOBS: I'm not trying to get into the relevance of
8 the investment. I'm trying to get to the fact that my client
9 said the same thing the first time that he said the second time,
10 your Honor, because they're trying to assert to this jury that we
11 somehow concocted something for the second interview.

12 THE COURT: I don't believe so and I agree with the
13 government on this point.

14 MR. JACOBS: Well, that's not -- I misunderstood that
15 then, your Honor.

16 BY MR. JACOBS:

17 Q. So Mr. Wilson has been consistent in his answers to you?

18 A. That's correct.

19 MR. JACOBS: Nothing further, your Honor.

20 THE COURT: Sir?

21 MR. PIAZZA: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. PIAZZA:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Just a few questions. You've interviewed a lot of people,
2 apparently. You've, you know, talked about some. You also
3 interviewed Gary Wilson, is that correct?

4 A. That's correct.

5 Q. Also, back in the fall of 2008, you also talked with Sue
6 Wilson, is that correct?

7 A. No, that's not correct.

8 Q. She talked with you at least in January of 2010?

9 A. January, 2010, correct.

10 Q. And you asked her to talk with you, is that correct?

11 A. That is correct.

12 Q. And she came -- and she did talk to you, is that correct?

13 A. Yes, she did.

14 Q. She answered your questions, is that correct?

15 A. Yes, she did.

16 Q. And in fact, you asked for some documents from either Sue or
17 Gary Wilson at various times and they provided documents to you,
18 is that correct?

19 A. That is correct.

20 Q. The relationship with, I believe, 24 that you have before
21 you -- you have 24A and that's the request for information
22 relating to employee, is that correct?

23 A. Correct.

24 Q. And it also includes a breakdown of wages with a notation --
25 this is Page 2 on Exhibit 24 -- "See the cover letter, as well as

1 the annual meetings."

2 A. That's correct.

3 Q. And we have 24B, is the cover letter itself, is that
4 correct?

5 A. That's correct.

6 Q. And this is given out November 3rd, 2008, is that correct?

7 A. It's dated November 3rd, 2008, correct.

8 Q. Now, during direct examination the other day, the
9 prosecution asked you to read Paragraph 3 of that letter
10 regarding who worked in the store, is that correct?

11 A. That's correct.

12 Q. But they didn't ask you to read Paragraph 4. Could you read
13 Paragraph 4?

14 A. Paragraph 4:

15 "Payroll checks are issued to Maxine Pochmara,
16 (wife of Robert Pochmara) based on 45 shares owned
17 in W & W Auto Parts."

18 Q. And that's purportedly signed by Miss Wilson, is that
19 correct?

20 A. There is a signature, Sue Wilson with Sec/Treas under it,
21 correct.

22 Q. All right.

23 MR. PIAZZA: Could I have a moment here, your Honor?

24 (Whereupon defense counsel confer off the record)

25 MR. PIAZZA: Thank you. Nothing further.

1 THE COURT: Redirect?

2 MS. PARKER: No redirect, your Honor. Thank you.

3 THE COURT: Thank you, sir.

4 THE WITNESS: Thank you, your Honor.

5 (At 10:04 a.m. - witness excused)

6 THE COURT: Does the government have any additional
7 witnesses?

8 MS. PARKER: The government does not.

9 THE COURT: Government rests?

10 MS. PARKER: I believe we could go over our exhibits at
11 a later time. I think I have an understanding of a few that are
12 not in and the rest, I believe, are received.

13 I think it would be 31, 31A, 90 and 91 that are not in
14 evidence. I believe the rest are. Subject to the concurrence on
15 that, the government does indeed rest.

16 THE COURT: There are some things I would like to take
17 up with the parties outside of your presence. So we are going to
18 give you a break. Mr. Crowder should be on his way here in a
19 moment.

20 Please rise for the jury.

21 (At 10:05 a.m. - jury leaves courtroom)

22 THE COURT: Please be seated.

23 Counsel, I want to review a couple of things with you
24 concerning the defendants' case. Can you tell me about the
25 defendants' intentions concerning providing testimony and the

1 extent to which you have reviewed their entitlement to not
2 testify.

3 Mr. Jacobs?

4 MR. JACOBS: Your Honor, of course, we would like to
5 reserve our right to argue at some point Rule 29 motions.

6 Secondly, in response to the Court's inquiries, after a
7 lot of discussions with my client and myself, we have elected not
8 to call any witnesses and my client will not be testifying.

9 THE COURT: Is that true for Mrs. Wilson as well?

10 MR. PIAZZA: Yes. James Piazza on behalf of Sue Wilson.
11 We will not be presenting any witnesses nor is my client going to
12 be called to the stand.

13 THE COURT: Let's take up your Rule 29 motion.

14 MS. PARKER: Your Honor, I would ask the Court to
15 inquiry of the defendants that that is indeed their decision.

16 THE COURT: That's fair.

17 MS. PARKER: Thank you.

18 THE COURT: Mr. Wilson, we have spent some time with a
19 number of issues. We actually issued an opinion about a week and
20 a half ago addressing one question which was the circumstances
21 under which your accountant could testify.

22 You've had a chance to review that with Mr. Jacobs?

23 DEFENDANT GARY WILSON: Yes, I have, your Honor.

24 THE COURT: You've also had a chance to talk with him
25 about the decision as to whether or not you would furnish

1 testimony yourself?

2 DEFENDANT GARY WILSON: Yes, I have, your Honor.

3 THE COURT: And indeed, it is your decision that you
4 choose not to provide testimony and simply to rely on the
5 question of whether or not the government has met their burden of
6 proof.

7 DEFENDANT GARY WILSON: Yes, I do, your Honor.

8 THE COURT: Thank you.

9 MR. PIAZZA: And your Honor, if I may inquire of my
10 client.

11 THE COURT: Certainly.

12 MR. PIAZZA: Miss Wilson, we've discussed the matter
13 about whether or not you should testify or not, is that correct?

14 DEFENDANT SUE WILSON: That's correct.

15 MR. PIAZZA: And in discussing that matter, I have
16 informed you that you have a right to testify, is that correct?

17 DEFENDANT SUE WILSON: That's correct.

18 MR. PIAZZA: And that if you decide to testify, that the
19 prosecution gets to cross-examine you. Do you understand that?

20 DEFENDANT SUE WILSON: Yes.

21 MR. PIAZZA: You also understand that you have a right
22 not to testify?

23 DEFENDANT SUE WILSON: Yes.

24 MR. PIAZZA: And you understand that the Court can
25 instruct the jury that they are not to use that against you in

1 any way. Do you understand that?

2 DEFENDANT SUE WILSON: Yes.

3 MR. PIAZZA: And we've had several discussions relating
4 to this, is that correct?

5 DEFENDANT SUE WILSON: That is correct.

6 MR. PIAZZA: And is it your decision not to testify at
7 this time?

8 DEFENDANT SUE WILSON: It is.

9 THE COURT: Thank you. I'm assuming that he is
10 preparing to argue his motion.

11 MR. JACOBS: Yes. Yes, your Honor. I was looking for
12 the indictment.

13 Your Honor, we would assert that pursuant to Rule 29,
14 even looking at the evidence most favorable to the government,
15 that they haven't reached the threshold necessary to take this
16 case to the jury.

17 The Court is well aware and we've talked about proposed
18 jury instructions, as to Count 1, we need a conspiracy and
19 agreement to defraud. As to Count 3, we have to furnish false
20 information or -- or fail to furnish information to the Social
21 Security Administration regarding the true identity of a person
22 earning wages.

23 We assert -- or I assert that the government has sure
24 shown that Robert Pochmara had a duty to report his -- any income
25 he received to the Railroad Retirement Board. That duty, though,

1 does not apply to my client, is not even a factor regarding the
2 elements of both Count 1 and Count 3.

3 That Mr. Pochmara or Mrs. Pochmara, whether we --
4 whether they are married or not married, and I believe the Court
5 decided that wasn't an issue, and yet the spouse had certain
6 earning limits. The spouse had certain designations such as
7 being an officer. And if the spouse was an officer, Mr. Pochmara
8 was supposed to have reported that to the Railroad Retirement
9 Board.

10 But I assert that again is not a factor regarding
11 whether my client is guilty of Count 1 or Count 3, and even if we
12 look at the evidence as most favorable to the government, that
13 the Court should not send this matter to the jury.

14 That's all, your Honor.

15 THE COURT: Sir?

16 MR. PIAZZA: I will concur and request the Court to
17 enter a directed verdict of acquittal pursuant to Rule 29 and
18 adopt brother counsel's argument.

19 THE COURT: Miss Parker?

20 MS. PARKER: Thank you, your Honor.

21 I agree with Mr. Jacobs with the standard that is that
22 the Court should view the evidence in the light most favorable to
23 the government.

24 I think this is a fairly simple case. Did the
25 defendants conspire with others, in this case, the Pochmaras, or

1 each other, or a combination thereof, to defraud the United
2 States by providing false information to the IRS and Social
3 Security regarding the wages that they were paying, the identity
4 of the person who was receiving those wages.

5 Likewise, Count 3, with intent to defraud, did they
6 provide false information. I think these are basically a case
7 that boils down to a simple set of facts and a simple issue
8 which is a jury issue.

9 Can a jury infer the requisite intent to defraud and
10 deceive from the evidence before them in this case? I submit
11 that they can.

12 Over a period of more than ten years, these defendants
13 prepared documents, made payments to Maxine Pochmara, not based
14 on her work but based on Robert Pochmara's employment and then
15 they filed their quarterly tax returns and annual tax returns for
16 their corporation totally mischaracterizing and providing W-2s
17 saying Maxine Pochmara was the person who earned the wages,
18 totally leaving Robert Pochmara out of the picture.

19 I think that is sufficient to prove the case.

20 THE COURT: And would you agree, that it would be
21 sufficient, even if the Wilsons were unfamiliar with Mr.
22 Pochmaras' reason for wanting the arrangement that was
23 ultimately made, that the earnings would be reported in Maxine's
24 name?

25 MS. PARKER: Absolutely. I think it's a reasonably

1 understood expectation that if you report earnings in the name
2 and Social Security number of one person, that are in fact the
3 wages of another person, that is false and fraudulent or
4 deceptive.

5 Whether you knew the motivations behind the request that
6 you enter into this arrangement is something that does not have
7 to be shown. And their knowledge or lack of knowledge on that
8 issue is not part of what's required to prove the case.

9 THE COURT: Now, I asked that question for a reason
10 because that was at least part of the argument that you advanced,
11 Mr. Jacobs.

12 Do you agree with Miss Parker or do you disagree?

13 MR. JACOBS: I believe the Court and Miss Parker have
14 correctly stated the law.

15 THE COURT: And I would respectfully agree with the
16 government, that the evidence that's been submitted demonstrates
17 a jury submissible question and would respectfully deny the Rule
18 29 motion.

19 That will have us needing, I think, at this juncture to
20 be sure that we are in agreement on the instructions.

21 Have you furnished a copy of the editing that you had
22 done, Miss Parker, to the defendants?

23 MS. PARKER: The e-mail was copied to defense counsel,
24 yes, the same one I sent you.

25 THE COURT: Okay. And I was actually looking at some

1 materials this morning with some physical edits on those
2 materials. And those have been furnished to the defendants.

3 MS. PARKER: Right. I'm sorry, your Honor. In the
4 interest of speed, since I have sometimes technical challenges in
5 terms of making all these modifications in writing and then
6 making them so you can understand what I'm changing, I just
7 hand-wrote them, had them scanned and attached to an e-mail, sent
8 to your law clerk and your court deputy and also Mr. Jacobs and
9 Mr. Piazza.

10 THE COURT: I understand.

11 MS. PARKER: So we all should be on the same page.

12 THE COURT: Have you had a chance to look at those
13 edits?

14 MR. JACOBS: Yes, I did, your Honor. I -- I likewise
15 made some notes on the document I received from Miss Parker and I
16 tendered that to your clerk this morning.

17 THE COURT: I think perhaps the best thing to do at this
18 stage is just to walk our way through that document in chambers
19 and --

20 MR. JACOBS: I believe so. I think we will -- we will
21 spend more than a few minutes going through these jury
22 instructions, your Honor.

23 THE COURT: We will close the record and we will see you
24 in chambers.

25 MR. PIAZZA: May we have two minutes before --

1 MR. JACOBS: Five minutes for the restroom?

2 THE COURT: Yes.

3 MR. JACOBS: Thank you, your Honor.

4 (At 10:16 a.m. - proceedings recessed)

5 (At 1:16 p.m. - proceedings resumed; out of the presence
6 of the jury)

7 THE COURT: Good afternoon. Please be seated. The
8 record will reflect the fact it's about quarter after one on
9 Friday afternoon. We had an opportunity to meet with counsel in
10 chambers about an hour ago. We spent about an hour reviewing
11 jury instructions in the case. I think each of the amendments
12 that we had arrived at has been made.

13 Not all of the amendments that may have been sought by
14 each of the parties was completed and I wanted you an opportunity
15 to develop the record on any issues concerning the instructions
16 that are not satisfactory to any one of you.

17 Miss Parker, any issues from the government's
18 perspective?

19 MS. PARKER: Yes, there are some, a couple minor ones,
20 one on Page 6. It says, "Weighing conflicting evidence, number
21 of witnesses." I ask that it just be "number of witnesses."
22 There really isn't a conflict in evidence in that regard,
23 particularly in this case.

24 THE COURT: Yes, agreed.

25 MS. PARKER: Down below that, on the first paragraph,

1 "Separate consideration," I believe Miss Pop provided the name of
2 the person. I just -- I don't have -- I think that's already
3 been provided but I propose changing the end of the sentence to,
4 "Remarks made by Gary Wilson concerning their testimony." There
5 really wasn't a decision by those individuals to be witnesses.
6 They had sort of an invitation that they couldn't refuse.

7 THE COURT: Subpoena.

8 MS. PARKER: Correct.

9 THE COURT: I think that's a good point.

10 MR. JACOBS: Change it to "concerning their testimony,"
11 your Honor, is that what you're saying?

12 THE COURT: Yes. Correct.

13 MS. PARKER: Yes.

14 THE COURT: Continuing.

15 MS. PARKER: I would propose moving the overt acts to
16 Page 11 (C) Paragraph 2, it says, "Indictment lists overt acts."
17 I would insert them there. I think the current placement is
18 problematic because immediately after the overt acts where they
19 are now, the instructions say on Page 10, "You must be convinced
20 the government has proved all of these elements beyond a
21 reasonable doubt," and I think that might be perceived as all of
22 those overt acts. Whereas the instruction on overt acts directly
23 states that an overt act need to be proved.

24 THE COURT: That would remove some confusion, I think.

25 MR. JACOBS: I think it's appropriate, your Honor. We

1 would be moving from Page 9, Paragraph C, the last sentence and
2 then the actual overt acts that go through small (vii), we would
3 be moving that to Page 11, following Paragraph 2?

4 Do I have that correct, Miss Parker?

5 MS. PARKER: Well, I would just insert it into the
6 paragraph: "The indictment lists overt acts," or just change it
7 to: "The indictment lists the following overt acts," and then
8 (i), (ii), (iii), (iv), (v) through (vii), and then: "The
9 government does not have to prove that all these acts committed,
10 only that these acts -- or that any of these acts themselves were
11 illegal."

12 MR. JACOBS: I have no objection to that change, your
13 Honor.

14 MS. PARKER: I think the first sentence in (2) (C), on
15 Page 9, needs to stay where it is: "Third, the government must
16 prove that a member of the conspiracy did at least one of the
17 overt acts described in the indictment," that that stays there.

18 THE COURT: Yes.

19 MS. PARKER: All right. Just so we're --

20 MR. PIAZZA: I will leave it to the discretion of the
21 Court.

22 THE COURT: That all makes sense to me.

23 MS. PARKER: One minor change on Page -- two minor
24 changes on Page 13. One, under: "Willfully and knowingly with
25 intent to deceive," (1) (A), "Conduct is not willful if it results

1 from negligence," I believe a comma needs to be inserted between
2 that and "inadvertence." I think some words were taken out in
3 between.

4 MR. JACOBS: Would you say that again, Miss Parker?
5 Again, I'm sorry, I missed it.

6 MS. PARKER: Sure, just insert a comma. And that would
7 be one modification. The final one on that page, on the third
8 paragraph, just, I think, to make it easier to read and
9 understand, change the second sentence by moving the clause:
10 "The wages for labor performed by Robert Pochmara," insert that
11 after "report."

12 So it would read, "If you are convinced that a defendant
13 deliberately ignored a high probability that it was unlawful to
14 report the wages for labor performed by Robert Pochmara under
15 Maxine Pochmara's name and Social Security number, comma, then
16 you may find --" and continued. I think the syntax is easier to
17 understand and read.

18 THE COURT: Yes. I believe because of the way we
19 structured it, I was going to add the word "however," comma, at
20 the beginning of 3.

21 MS. PARKER: That is true, I remember you saying that.
22 I forgot that. Yeah. "However, no one can avoid
23 responsibility"?

24 THE COURT: Yeah.

25 THE LAW CLERK: You do want that?

1 THE COURT: Pardon me?

2 THE LAW CLERK: You do want that?

3 THE COURT: Yes, please. Have we exhausted you yet, Ms.
4 Parker?

5 MS. PARKER: I have, your Honor. Thank you.

6 THE COURT: Good. We are exhausted. That's it.

7 MR. JACOBS: Your Honor, Page 13, of course the Court
8 did incorporate some of the willfulness instruction that I
9 submitted to the Court pursuant to the *Duncan* case.

10 THE COURT: Yes, sir.

11 MR. JACOBS: And I appreciate the Court doing that but
12 we did delete some things, specifically the -- the proposed
13 instruction read: "Conduct is not willful if it results from
14 negligence, comma, however great, comma, inadvertence or mistake
15 or due to a good faith misunderstanding of the law." And the
16 Court deleted the language, "however great" and did not put in
17 the rest of that paragraph as far as -- unless I missed it --
18 "Inadvertence, mistake or due to a good faith misunderstanding of
19 the law."

20 The Court, I thought, talked about moving that to a
21 different spot and maybe I missed that but I don't see that
22 anywhere else in here.

23 THE COURT: I didn't think that the evidence supported
24 it.

25 MR. JACOBS: Well, I will just place my objection on the

1 record.

2 THE COURT: Thank you.

3 MR. JACOBS: Secondly, I object in total to the
4 deliberate ignorance instruction on Page 13, Paragraph 3, under
5 the willful, knowingly and with intent to deceive definitions.
6 The Court has heard no testimony from the defense in this matter.
7 We've heard arguments by the defense in opening statement but I
8 would assert that those arguments do not justify a deliberate
9 ignorance type instruction in this particular case.

10 That's all the objections I have, your Honor.

11 THE COURT: Thank you, sir.

12 MR. PIAZZA: Yes, your Honor. On behalf of Sue Wilson,
13 I concur with Mr. Jacobs that under willfully, knowingly and with
14 intent to deceive, (1) (A) should at least read: "Conduct is not
15 willful if it results from negligence, comma, however great,
16 comma, inadvertence or mistake." At least the "however great"
17 should be allowed based on *Duncan* that we previously cited to the
18 Court.

19 In addition, in Paragraph 3 under willfully, knowingly
20 and with intent to deceive, I agree with Mr. Jacobs that we
21 object to that, the deliberate ignorance statement. I believe it
22 waters down the government's burden of, you know, proving
23 willfully and knowingly and it lowers the burden lower than
24 beyond a reasonable doubt when it adds that to the willfully and
25 knowingly.

1 However, if the Court is going to overrule my objection
2 and include that Paragraph 3, I would ask that paragraph of the
3 draft of the deliberate ignorance, on Page 17 of the Court's
4 draft, and I will read it into the record, quote:

5 "But to find this, you must be convinced beyond a
6 reasonable doubt that the defendant or defendants were
7 aware of a high probability that the arrangement for
8 paying Maxine Pochmara for work done by Robert Pochmara
9 was designed to deceive the United States or of its
10 agencies or departments, and that the defendant
11 deliberately closed his or her eyes to what was
12 obvious. Carelessness or negligence or foolishness
13 on the defendant's part is not the same as knowledge,
14 and is not enough to convict. This, of course, is for
15 you to decide."

16 If the Court is going to give Paragraph 3, willfully,
17 knowingly and with intent to deceive, I would ask that that other
18 paragraph be added.

19 THE COURT: What does that last paragraph add that
20 (1) (A) does not adequately cover? However great?

21 MR. PIAZZA: It adds foolishness which is not covered
22 under (1) (A) or (B).

23 MR. JACOBS: It also gives a further explanation, your
24 Honor, of the -- what's appropriate conduct and what's
25 inappropriate as far as a further explanation of what deliberate

1 ignorance is and I would -- I would join with my counsel's
2 request for that additional paragraph.

3 THE COURT: Miss Parker, do you wish to comment?

4 MS. PARKER: The government is satisfied with the
5 instructions as proposed. I think if -- if it would resolve the
6 matter by saying: "Conduct is not willful if it results from
7 foolishness, negligence and inadvertence and if that would
8 satisfy this concern," I don't have any objection to that. If
9 it's the balance of the paragraph, I proposed that paragraph. I
10 don't object to it per se but I also think the Court has drawn an
11 acceptable line of demarcation between negligence and ignorance
12 which is of the deliberate nature for the calculated purpose of
13 avoiding consciousness of guilt. And I think that's
14 appropriately the standard to be outlined.

15 THE COURT: That is the line that we're trying to draw.
16 She made an offer but I don't think it's --

17 MR. JACOBS: I would like to accept that offer, your
18 Honor. I would back down on my objection regarding deliberate
19 ignorance. I don't know if my co-counsel would accept that.

20 MR. PIAZZA: I would ask that the whole paragraph be in
21 because reading it in total, as indicated, "But to find this, you
22 must be convinced beyond a reasonable doubt that the defendant or
23 defendants were aware of a high probability," I think it reads
24 better given that entire paragraph and since it was drafted by
25 the prosecution --

1 THE COURT: Respectfully, I think what we will do is to
2 resolve Mr. Jacobs' objection by the addition of the language to
3 (1) (A) and respectfully, Mr. Piazza, I think we -- with that
4 addition, have adequately demarcated the two concepts that we are
5 trying to instruct the jury on.

6 MR. PIAZZA: Okay. So for the record, the Court is
7 denying my request to one, not give the deliberate ignorance and
8 if the Court is going to give it, deny my request to add that
9 paragraph in total.

10 THE COURT: Yes.

11 MR. PIAZZA: I'm sorry?

12 THE COURT: Yes, sir.

13 MR. PIAZZA: Okay. Also, the Court is denying my
14 request to add under (1) (A), "Conduct is not willful if it
15 results from negligence however great." Again, those words were
16 originally included in the *Duncan* case, taken out by this Court.

17 Is the Court denying my request to add that in?

18 MS. PARKER: As I recall, *Duncan*, the facts were the
19 Court declined an instruction on good faith where there was a
20 factual basis for it and declined to give the instruction -- the
21 Sixth Circuit reversed the conviction but that doesn't equate
22 with a verbatim approval of the proposed instruction. I believe
23 that terminology came from a proposed instruction.

24 THE COURT: And I'm concerned about the particular
25 language not -- not being precise. However great in referring to

1 negligence, I have a concern, is going to confuse the jury. What
2 if we said however modest?

3 MR. PIAZZA: That's not what the proposed instruction in
4 *Duncan* suggested.

5 MR. JACOBS: That wasn't what the instruction in *Duncan*
6 was, your Honor --

7 THE COURT: But it highlights --

8 MR. JACOBS: -- in reading the actual willful
9 instruction.

10 THE COURT: But it does highlight my point. If we said
11 however modest or however great, we will be getting to bracket
12 something rather than simply saying negligence.

13 So I have eliminated the language for two reasons, one,
14 it was -- as Miss Parker simply pointed out, it's simply a
15 proposed instruction, was rejected in *Duncan*, number one, and
16 number two, I don't like the reference to degrees of negligence
17 either way. I think we are better off with simply using the
18 single word and leaving the jury to their interpretation and
19 understanding.

20 MR. PIAZZA: So the Court has denied my request to add
21 those two words.

22 THE COURT: Correct.

23 MR. PIAZZA: All right.

24 THE COURT: However significant or insignificant.

25 MR. PIAZZA: I have nothing further relating to the jury

1 instructions.

2 THE COURT: That brings us to a conclusion. We will
3 make sure that you are e-mailed a copy of the final instructions
4 before the close of business today. We will see you at 8:30 on
5 Tuesday morning.

6 Any additional business we ought to cover before we
7 break for the week, government?

8 MS. PARKER: Nothing for the government, your Honor.

9 THE COURT: Mr. Jacobs?

10 MR. JACOBS: No, sir.

11 THE COURT: Mr. Piazza?

12 MR. PIAZZA: Just a question. I take it once the jury
13 has it, they will stay here until five o'clock.

14 THE COURT: Yes.

15 MR. PIAZZA: Or until they reach a verdict.

16 THE COURT: Correct.

17 MR. PIAZZA: Okay.

18 THE COURT: Have a good weekend. Appreciate your
19 efforts to be here through the course of the week.

20 (At 1:34 p.m. proceedings recessed)

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CERTIFICATE OF COURT REPORTER

I, PEG L. GOODRICH, Official Court Reporter
in and for the United States District Court, Eastern
District of Michigan, appointed pursuant to the
provisions of Title 28, United States Code, Section
753, do hereby certify that the foregoing proceedings
held before the HONORABLE THOMAS L. LUDINGTON, District
Court Judge, is a true and correct transcript of my
stenotype notes in the matter of UNITED STATES OF AMERICA
v GARY WILSON and SUE WILSON, File No. 12-20607, held on
Friday, May 24, 2013.

s/Peg L. Goodrich
Peg L. Goodrich, CSR, RPR, RMR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: November 8, 2013
Bay City, Michigan